

25

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 16TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE G.C.BHARUKA

WRIT PETITION NOS.14350 TO 14357/98 C/W. W.Ps.1372-22,
13422-23, 14853, and 12140-42 of 1998

IN W.P.14350-57/98

A handwritten signature, possibly 'R', is enclosed in a circle. Below the circle are the initials 'LMB'.

BETWEEN:

1. Firozkhan,
s/o.Mohammed Hanif Madiwale,
Jr.Assistant,
KSRTC House No.EWS 189,
7th Cross, Navanagar,
Hubli-580 025.
2. Mahendra Babu,
s/o.Chandrasekhar Dattargi,
rest: -do-
3. Lokesh Naik,
s/o.Somaiah Naik,
rest: - do -
4. Prakash, P.S.,
s/o.Subba Rao,
rest: - do -
5. Shahikala,
w/o.Gurubasappa Pujar,
rest: - do -
6. Abdul Rehaman,
s/o.Abdul Azeez Mulla,
rest: - do -
7. Ganapathi,
s/o.Thammanna Ambore,
Conductor,
rest: - do -
8. Basavanthappa Bajanthri,
Occ: Helper "A",
rest: - do -

..PETITIONERS

(By Sri Vighneswar S.Shastri, Adv.)

AND:

1. Karnataka State Road Transport Corporation,
Central Office,
Double Road,
Shanthinagar,
Bangalore-27,
rep.by its Chairman & Managing Director.
2. The Chief Personnel Manager,
and Chief Coordinator,
K.S.R.T.C. CAT Cell,
KSRTC Central Office,
Double Road, Shanthinagar,
Bangalore-27.

.. RESPONDENTS

(By Sri L.Govindaraj, Adv.)

These writ petitions are filed under Articles 226 and 227 of the Constitution praying this Court to quash the endorsements dated 17.4.98 vide Annexure-K and to declare that fixing of 50% of aggregate marks and non-providing of relaxation to SC/ST candidates are arbitrary and irrational and the same has not nexus with the object sought to be achieved and further declare that only the length of service is to be criterion with minimum marks for inservice candidates as per Notification dated 4.3.98.

IN W.P.Nos.13721-22/98

1. H.K.Basavarajappa,
s/o.Kenchappa,
Asst.Accountant,
K.S.R.T.C. Davanager Divn.,
Davanagere.
2. D.Venkatesh,
s/o.Doddaiah,
Asst.Accountant,
K.S.R.T.C. Bangalore
Rural Division,
Bangalore.

..PETITIONERS.

(By Sri V.S.Naik, Adv.)

AND:

1. The Management of KSRTC.,
Central Office,
K.H.Road,
Shanthinagar,
Bangalore-27,
rep.by Managing Director.

2. The Chief Personnel Manager,
KSRTC, Central Offices,
K.H.Road, Shanthinagar,
Bangalore-27.

..RESPONDENTS

(By Sri L.Govindaraj, Adv.)

These writ petitions are filed under Articles 226 and 227 of the Constitution praying this Court to quash Annexure-J dated 4.3.98 since the said notification prescribes 50% minimum aggregate marks in the qualifying examination in as much as fixation of the said qualification is totally unjust, arbitrary, illegal apart from being violative of Art.16(4) of the Constitution of India, etc.

IN W.P.Nos.13422-23/98

BETWEEN:

1. Thimmegowda,
s/o.Dasappa,
Asst.Accountant,
KSRTC, Bangalore Rural
Division, Bangalore
Bus Station,
Bangalore-9.
2. M.Ningappa,
s/o.Marilinge Gowda,
Asst.Accountant,
KSRTC, Bangalore Rural
Division, Bangalore Bus
Station, Bangalore-9.

...RESPONDENTS

(By Sri K.Hanumantharayappa, Adv.)

AND:

1. K.S.R.T.C.,
Central Offices,
K.H.Road,
Bangalore-27,
by its Managing Director.
2. The Chief Personnel Manager,
KSRTC, Central Offices,
K.H.Road,
Bangalore-27.

..RESPONDENTS

(By Sri L.Govindaraj, Adv.)

These writ petitions are filed under Sections 226 and 227 of the Constitution praying this Court to quash Annexure-A dated 4.3.98 passed by the respondents, etc.

IN W.P.Nos.12140-42/98

1. G.Bheema Naik,
s/o.late Ganya Nayak,
Asst.Accountant,
KSRTC Bangalore Rural
Division, Bangalore
Bus Station,
Bangalore-9.
2. H.N.Nagendra,
Junior Asst.,
KSRTC, Kanakapura Depot,
Kanakapura,
Bangalore Rural Dist.
3. Shivashankar N.Bhat,
s/o. late Nagesh N.Bhat,
Ju.Assistant,
KSRTC, Bangalore Rural
Division, Bangalore
Bus Station,
Bangalore-9.

.. PETITIONERS

(By Sri K.Hanumantharayappa, Adv.)

AND:

1. K.S.R.T.C. Cenmtral Offices,
K.H.Road, Shanthinagar,
Bangalore-27,
by its Managing Director.
2. The Chief Personnel Manager,
KSRTC, Central Offices,
K.H.Road, Bangalore-27.

..RESPONDENTS

(By Sri L.Govindaraj, Adv.)

These writ petitions are filed under Articles 226 and 227 of the Constitution praying this Court to quash the notification vide Annexure-A dated 4.3.98 passed by the respondents, etc.

IN W.P.NO.14853/98

BETWEEN:

Niranjana Murthy,
s/o.Gurusiddappa Patel,
Junior Assistant,
Davnagere Depot,
K.S.R.T.C. Davanager Divn.,
Davanagere,
r/a.No.1035, Shivakumara
Swamy Nagar, Ii Stage,
Davanagere.
(By Sri V.S.Naik, Adv.)

..PETITIONER

AND:

1. The Govt.of Karnataka,
Home & Transport Dept.,
M.S.Building,
Bangalore-1,
rep.by its Secretary
to Government.
2. The Management of KSRTC,
Central Offices,
K.H.Road,
Shanthinagar,
Bangalore-27,
rep.by its Managing Director.
3. The Chief Personnel Manager,
K.S.R.T.C., Central Offices,
K.H.Road, Shanthinagar,
Bangalore-27.

..RESPONDENTS


(By Sri L.Govindaraj, Adv.)

This writ petition is filed under Articles 226 and 227 of the Constitution praying this Court to quash the scheme, vide circular No.1039 dt. 22.12.97 vide Annexure-E in so far as it relates to the fixing of the 50% aggregate marks to be the criteria to enable the employees to mapply for the higher posts-Class-I & II inasmuch as, incorporation of the said clause in the scheme is arbitrary and it is violative of Articles 14 & 16 of the Constitution of India, etc.

These petitions coming on for orders this day, the Court made the following:


ORDER

The petitioners` are Class-III employees of the respondent-Corporation which has been established under Section 3 of the Road Transport Corporations Act, 1950 (hereinafter referred to as "the Act").



2. The petitioners have come up before this Court for quashing of communication made to them whereunder they have been informed that since they do not possess the requisite minimum ~~per~~ percentage of aggregate marks in the qualifying examination therefore their applications to take common aptitude test for Class-II post filed pursuant to the notification dated 4.3.1998 (Annexure-A) stands rejected.

3. It appears that keeping in view the various demands raised by the employees of the Corporation a memorandum of understanding dated 10.5.1993 (Annexure-D) was entered into between the Corporation and its employees to which the State Government accorded its approval under its order No.HTD.81 TRE 93 dated 10.9.1993. Clause 21(7) of the said memorandum provided for framing of in-service recruitment scheme in the Corporation. For this purpose a Committee was constituted on 17.12.1993 under the Chairmanship of the Director (P) and other four members of the Corporation to go into the details of the scheme for implementation in the Corporation. The Committee held various meetings and drew^{up} its proceedings on 3.7.1996 which was forwarded by the Chief Traffic Manager (Commercial), who was the Chairman of the Sub-Committee, under its letter dated 16.7.1996. Subsequently the main committee examined the report of the sub-committee and made its recommendation to the Board of Directors (in short "the Board"), whereupon the



Board passed a resolution No.75198 dated 20.11.97 resolving to amend the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982, (in short "the Regulation") in order to implement ^{the} ~~A~~ scheme drawn for providing recruitment facilities to in-service candidates. The State Government under its order No.192 TRA 97 dated 19.12.1997 ~~has~~ approved the amendment to the Regulation as also to the Scheme. The power of the Corporation to frame/amend the Regulation flows from Section 14 read with Section 45 of the Act. The relevant sub-section 3 of Section 14 and that of Section 45 of the Act reads as under:

"Sec.14(3):


The conditions of appointment and service and the scales of pay of the officers and employees of a Corporation shall-

(a) as respects the Managing Director, the Chief Accounts Officer and the Financial Adviser, or, as the case may be the Chief Accounts Officer-cum-Financial Adviser, be such, as may be prescribed, and

(b) as respects the other officers and employees, be such, as may, subject to the provisions of section 34, be determined by regulations made under this Act.

Sec.45(1):

A Corporation may, with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.



(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters namely-

(a) the manner in which, and the purposes for which, persons may be associated with the Board under Section 10.

(b) the time and place of meetings of the Board and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment of service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Financial Adviser.

(d) ""

(e) ""

Therefore the amendments made to the regulations as also the scheme formulated for in-service recruitment are statutory in nature having been made pursuant to the legislative delegation.

4. By ^{Substituting} ~~amending~~ the Regulation 3(2) now one ^{more} ~~of~~ ^{the} methods for recruitment has been provided ~~is by~~ ^{recruitment} from among the in-service candidates. For the existing Regulation 3(2), the following has been substituted:

"Regulation 3(2)(a): The method of recruitment to each post and the qualifications prescribed thereof shall be as shown in Schedule 'A' to these Regulations except for In-service candidates.

(b) The method of recruitment for In-service candidates and the

43

qualifications thereof shall be as per the Karnataka State Road Transport Corporation (In-service Recruitment) Scheme, 1997.


(c) Where in the opinion of the Managing Director it is found desirable to fill up any CLASS-III or Class IV direct recruitment vacancy on deputation, such vacancy shall be filled in by deputation of an employee already in service of the Central or State Government or Undertakings owned by Central or State Government or other State Transport Undertakings on such pay, pay scale and allowance as are admissible to him in his parent department/Undertaking provided the employee is holding equivalent post to which he is appointed on deputation in the Corporation."

In the Scheme one of the eligibility criteria prescribed for in-service candidates is to the following effect:

"III(ii) Eligibility Criteria: The candidates should possess the minimum educational qualification prescribed for the direct recruitment posts as specified in Schedule 'A' of the KSRTC (Cadres and Recruitment) Regulations, 1982, with not less than 50% of marks in the qualifying examination computed as an average for all the years/semesters.

Para IV(1) of the Scheme provides that:

"(IV) Procedure for In-service recruitment: (1) 20% quota will be carved out of the direct recruitment quota meant for Class-II categories only for In-service candidates wherever the direct recruitment quota is 50% or above in the method of filling up of these posts as prescribed in the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982, i.e., out of the number of posts that would be advertised for direct recruitment, in the above said categories, 20% of posts shall



be carved out for In-service Recruitment quota."

5. It was pursuant to the said Scheme that the notification at Annexure-A was published inviting applications from the eligible in-service candidates. But since the petitioners were found to be ineligible having secured less than 50% marks in the qualifying examination their applications stood rejected as per Annexure-K to R.

6. The learned Counsel for the petitioners has submitted that the Regulations to the extent it provides for 50% of marks is not consistent with the recommendations of the Sub-Committee and the Main Committee and therefore the same cannot stand ^{the State of} ~~on~~ reasonableness. It has also been submitted that the prescription of 50% marks in the qualifying examination has not been provided for the direct recruits and therefore there is a discrimination in this regard between the in-service candidates and the open market candidates.

7. So far as making of regulations are concerned, as noticed above, those have been framed by the Corporation with due approval of the State Government pursuant to the ^{legislative} ~~provisionary~~ delegation made in this regard. The petitioners have failed to show that in framing the said regulations the Corporation ^{has} ~~in~~ any way exceeded the statutory provisions of the Act or any limitation governing the exercise of delegated power or that the

LM

regulations are in any ^{way} violative of any provision of the Constitution of India or any other ^{governing} provisions. So far as prescription of eligibility criteria for recruitments either of the in-service candidates or the candidates drawn from the open market is concerned, it is essentially a matter of policy ^{to} ~~as~~ to be framed keeping in view the administrative and management requirements and expectation of higher level of performance by the ^{appointees} ~~candidates~~. There cannot be any ^{judicial} ~~jurisdictional~~ review in such matters. Therefore, in my opinion, the regulation cannot be said to be bad for ^{any} ~~the said~~ reason.


8. So far as the memorandum of understanding is concerned it was sought to be carried out by forming committees and after taking ~~of~~ the recommendations of ^{and the main committee,} the sub-committee ~~as~~ the Corporation has come to its own conclusion for implementation thereof in the manner it felt most desirable in the best interest of the Corporation. Only because the memorandum of understanding was entered into for examining the aspect of providing recruitment facilities to in-service candidates, it cannot be said that the Corporation was bound by any doctrine of estoppel to accede to all and every suggestion made by the ^{committees} ~~employees~~. Even otherwise

3

it is well settled that there is no estoppel against the statute and therefore the understanding, if any, entered into between the parties has to yield to the statutory regulations.

9. Coming to the last ground of discrimination, it has been brought to my notice that under Regulation 4(7) ^{it} ~~which~~ has been specifically provided that "no person who has secured less percentage of marks as may be stipulated by the Corporation from time to time in the examination prescribed as the minimum qualification required for appointment in the regulations of recruitment to the respective cadre or post shall be eligible to apply." Therefore under the regulations the Corporation has been empowered to provide for the minimum of percentage of marks which is required to be obtained by the candidate for being eligible to the post. The order dated 17.3.1983 passed by the Managing Director, as ~~the~~ delegatee of the Board of Directors, has been placed on record as Annexure-R3 which shows that for all Class-II posts the minimum percentage of marks to be obtained in qualifying examination has been prescribed as 50%. In that view of the matter the allegations of discrimination also fails.

10. For the aforesaid reasons the petitioners



318

are not entitled to any relief in these writ petitions.
Accordingly these writ petitions are dismissed.

sgs/



Sd/-
JUDGE